

TIME LIMITS FOR BEGINNING PROBATE CASES

- ☛ A probate may be started up to **three (3) years** after a person's death.
- ☛ Probates are not always required in New Mexico.
- ☛ A probate is usually opened because someone needs the legal authority to act on behalf of the estate to:
 - transfer assets of the estate;
 - act in legal proceedings on behalf of the estate; or
 - do anything else necessary on behalf of the estate.
- ☛ If a probate proceeding has not been commenced, a creditor may ask to be appointed as personal representative of an estate, but unless all heirs with equal or higher priority for appointment agree to the appointment, the proceeding must be filed in the District Court.

DEMAND FOR NOTICE

- ☛ Any person requiring notice about a deceased person's estate can file a **Demand for Notice**
- ☛ *"...with the clerk of the court in which the proceedings for the decedent's estate are being conducted or in the **District Court** of the county where they would be pending if commenced."*
- ☛ **A Probate Court cannot accept a Demand for Notice unless a probate has been filed in that Probate Court.**
- ☛ A **Demand for Notice** must include all of the following information:
 - The name of the decedent;
 - The nature of interest in the estate of the person demanding notice;
 - The address of the person demanding notice or that of their attorney.

- ☛ Once a probate has been opened, all Demands for Notice should be filed in the Court where the proceeding was commenced.
- ☛ The Personal Representative must provide copies of all court proceedings to each person demanding notice.

NOTICE OF APPOINTMENT TO CREDITORS

- ☛ Within three (3) months of being appointed, the personal representative is required to give **actual notice** of the appointment to known and reasonably ascertainable creditors of the estate.
- ☛ The personal representative may also **publish notice** to unknown creditors in a newspaper of general circulation in the county where the person was domiciled at the time of his or her death.
- ☛ The Notice must be published once a week for two consecutive weeks.

CLAIMS AGAINST THE ESTATE

Time Limit for Claims

- ☛ If no notice is given, a creditor's claim against an estate must be presented within **one (1) year** after a person's death, or be deemed forever barred.
 - This time is further limited once the creditor is given actual or published Notice of the Appointment of Personal Representative.
 - Creditors have **two months** after the mailing or first publication of the Notice of Appointment to submit a claim against the estate.

Presentation of Claims

- ☛ Claims against an estate should be presented as follows:
 - Claimant is required to deliver or mail to the personal representative a written

statement of the claim indicating its basis, the name and address of the claimant and the amount claimant and/or

- File a written statement of claim with the appropriate court.

- ☛ Without filing a claim, a claimant may commence a proceeding against the personal representative in the appropriate court within the time limit set out in the law.

A Probate Court cannot accept a claim against an estate that has not been filed with that Probate Court.

Payment of Claims

- ☛ Upon receiving a claim against the estate, the personal representative must determine the validity of the claim and either allow or disallow the claim.
 - If the personal representative does not notify the creditor in writing of this determination **within sixty (60) days** after the time for the original presentation of the claim has expired, the claim is deemed a valid claim and is allowed.
 - If a claim is disallowed, the creditor must file a petition for allowance in the District Court **no later than sixty (60) days** after the mailing of the notice of disallowance.

Probate Courts **cannot** (1) determine the validity of a claim against an estate; or, (2) direct the payment of any claims against an estate; or, (3) hold funds in escrow to pay creditors' claims.

Priority of Claims

If an estate's assets are insufficient to pay all claims against the estate, the law determines the priority for payment of creditors' claims. **Claims must be paid in the following order:**

First: Costs and expenses of administration of the estate; then,
Second: Reasonable funeral expenses of the decedent; then,
Third: Debts and taxes with preference under federal law; then,
Fourth: Reasonable medical and hospital expenses of the last illness of the decedent; then,
Fifth: Debts and taxes with preference under other laws of New Mexico; and then,
Sixth: All other claims.

- ☛ No preference in payment can be given to any claim over another claim in the same class.
- ☛ Claims that are due and payable are not entitled to preference over claims not yet due.
- ☛ If payment of higher priority claims exhausts all probate estate assets, creditors with lower priority for payment receive nothing. However, a creditor may seek recovery from assets that pass outside of probate, such as payable on death accounts or joint tenancy property, but only through a District Court proceeding.

FAMILY AND PERSONAL PROPERTY ALLOWANCES

New Mexico has two laws that exempt property of an estate from creditors' claims.

Family Allowance--A decedent's surviving spouse (or if no surviving spouse, the minor or dependent child or children of decedent) is entitled to a family allowance of **\$30,000.00** which is exempt from and has priority over all claims against the estate.

Personal Property Allowance--In addition to the family allowance, the decedent's spouse, or if no surviving spouse, children, are entitled to an allowance of **\$15,000.00** in personal property.

INVENTORIES AND ACCOUNTINGS

☛ A Personal Representative is required to prepare an Inventory of the assets of the estate **within ninety (90) days** of being appointed. The Personal Representative must also prepare an Accounting before closing the estate.

☛ **The Personal Representative is not required to file the Inventory and Accounting with the Court, but must provide copies of these documents to interested persons who request them.**

HELP?

Some procedures may require the services of an attorney. The Probate Court staff can provide information, but not legal services or forms that are not standard probate forms.

USEFUL PHONE NUMBERS, WEBSITES & E-MAIL ADDRESSES

Bernalillo County Probate Court
 Court of Wills, Estates & Probate
 One Civic Plaza NW, 6th Floor
 Albuquerque NM 87102
Telephone: (505) 468-1233
 or (505) 468-1234
Fax: (505) 468-1298
www.bernco.gov/probate_judge/

Second Judicial District Court--Civil Division
 P.O. Box 488
 Albuquerque, NM 87103
Telephone: (505) 841-7451
Fax: (505) 841-7495

This free brochure is provided as a public service by the Bernalillo County Probate Court.



CLAIMS AGAINST PROBATE ESTATES IN NEW MEXICO

THIS BROCHURE is a procedural guide for creditors and other claimants in informal probate proceedings.

The term **creditor** includes claims for credit cards and mortgages, utilities, medical bills, taxes and other alleged debts.

Those with potential claims against an estate should be aware that:

- ☛ Probates in New Mexico are generally filed in the county where the person was domiciled at the time of his or her death.
- ☛ Probate Courts in New Mexico have what is known as *concurrent jurisdiction* with District Courts over informal probate proceedings
 - This means an informal probate can be filed in either the Probate Court or District Court in the county where a person was domiciled at the time of his or her death.
 - New Mexico has 33 counties and is divided into 13 judicial districts.
- ☛ **Formal probates**, including determinations of heirship, contested cases, and trust matters, cannot be heard by the Probate Court. These cases must be filed in the District Court.